



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 05, 2023

TIME: 11:20 AM

WSR 23-08-086

Agency: Office of Administrative Hearings (OAH)

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR 22-19-088 ; or**

☐ **Expedited Rule Making--Proposed notice was filed as WSR** _____; or

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

☐ **Proposal is exempt under RCW** _____.

Title of rule and other identifying information: (describe subject)

WAC 10-24-010. Representation as an Accommodation for a Party with Disabilities.

Some parties with disabilities may not be able to meaningfully participate in adjudicative proceedings before OAH. Such parties may require a disability accommodation that provides them with a representative. This rule describes a process for determining if a party qualifies for this accommodation. It also describes how the appointment of a suitable representative is made.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
5/9/2023	1:00pm	Office of Administrative Hearings 2420 Bristol Court SW Olympia, WA 98502	For directions, call or go to our public website at https://oah.wa.gov

Date of intended adoption: 6/6/2023 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Sabiha Malikani Ahmad

Address: PO Box 42488, Olympia, WA 98504-2488

Email: rulemaking@oah.wa.gov

Fax: (360) 664-8721

Other:

By (date) 5/9/2023

Assistance for persons with disabilities:

Contact Johnette Sullivan, Deputy Chief ALJ – ADA
Coordinator

Phone: (360-407-2700

Fax: 360-664-8721

TTY: 711

Email: OAH_ADACoordinator@oah.wa.gov

Other:

By (date) 5/2/2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The changes are intended to improve clarity and readability. The proposal clarifies the records that are confidential under the Public Records Act. We have made certain other changes to improve the transparency of the process. Subsections that expired two years after implementation are being removed. OAH failed to establish a network of suitable representatives and that section is removed. The proposal does not change the eligibility requirements for the accommodation.

Reasons supporting proposal: The purpose serves to ensure that OAH's accommodation rule for people with disabilities is "clearly and simply stated, so that it can be understood by those required to comply." RCW 34.05.220(5). Furthermore, the transparent articulation of our current process as it has developed in the early years of this rule's implementation serves our mandate under the Public Records Act whereby "Each state agency shall separately state and currently publish in the Washington Administrative Code [...] (b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available; (c) Rules of procedure[.]" RCW 42.56.040.

Statutory authority for adoption: RCW 34.12.080, 34.05.250, and 34.12.030

Statute being implemented: This rule implements the accommodation mandates under the Americans with Disabilities Act (ADA) and antidiscrimination mandates under the Washington Law Against Discrimination (WLAD). OAH is obligated to

ensure parties have access to its services under the ADA and WLAD. The OAH possesses obligations pertinent to this rule under Title II of the ADA as a state agency, as well as Title III of the ADA as a place of public accommodation.

Is rule necessary because of a:

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION: The Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134, 12181-12189;
The Rehabilitation Act of 1973 29 U.S.C. §701 *et seq.*;

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Type of proponent: ☐ Private ☐ Public ☒ Governmental

Name of proponent: (person or organization) Washington State Office of Administrative Hearing

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Johnette Sullivan, Deputy Chief ALJ	2420 Bristol Court SW Olympia, WA 98502	(360) 407-2700
Implementation:	Johnette Sullivan, Deputy Chief ALJ	2420 Bristol Court SW Olympia, WA 98502	((360) 407-2700
Enforcement:	Johnette Sullivan, Deputy Chief ALJ	2420 Bristol Court SW Olympia, WA 98502	(360) 407-2700

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?

☐ Yes ☒ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

☐ Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

☒ No: Please explain: OAH's proposed amendment does not involve rules of any of the agencies identified in RCW 34.05.328(5) for which a cost-benefit analysis is required.

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

☒ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

"Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

42 U.S.C. § 12132.

"No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity."

28 C.F.R. § 35.130(a).

"A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity."

28 C.F.R. § 35.130(b)(7)(i).

"Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted a reasonable modification that was denied to an individual without a disability."

28 C.F.R. § 35.130(i)

"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."

42 U.S.C. § 12182.

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570](#)(2) because it was adopted by a referendum.

☒ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(3). Check all that apply:

☒ [RCW 34.05.310](#) (4)(b)
(Internal government operations)

☐ [RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

☒ [RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

☐ [RCW 34.05.310](#) (4)(e)
(Dictated by statute)

☐ [RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

☒ [RCW 34.05.310](#) (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(4) (does not affect small businesses).

☐ This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

☒ The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

☐ The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

☐ The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____

☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

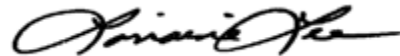
Phone:
Fax:
TTY:
Email:
Other:

Date: 4/5/2023

Name: Lorraine Lee

Title: Chief Administrative Law Judge

Signature:

A handwritten signature in black ink, appearing to read "Lorraine Lee", written in a cursive style.